

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 01-0304  
ADJUSTED GROSS INCOME TAX  
For Year 1998**

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**ISSUES**

**I. Sales/Use Tax—Best information available; failure to maintain adequate records**

**Authority:** 45 IAC 2.2-2-2; 45 IAC 2.2-3-25; 45 IAC 15-5-3; 45 IAC 15-5-1.

Taxpayer argues that the proposed assessment should be reduced. Taxpayer failed to maintain adequate business records. However, taxpayer believes that the auditor's use of the best information available was inappropriate.

**STATEMENT OF FACTS**

Taxpayer underwent a computer system change in 1998 that resulted in what the taxpayer believes to be suspect information that was relied upon by the auditor. The taxpayer believes that the missing records would show that 1998 Indiana service revenues were higher than existing business records indicate. The auditor relied on all of the information provided to her by the taxpayer and refused to participate in an exercise of estimating the missing data by looking at the statistical data of other years.

Taxpayer, along with the remittance for an uncontested portion of the tax and penalty assessed, protested the remainder in a letter dated November 2, 2001. Taxpayer was mailed a notice of hearing on June 3, 2003 and responded to said notice on June 9, 2003. During this response, the hearing date was confirmed to be June 24, 2003, to be held by telephone at 10 a.m. A confirmation letter was mailed to the taxpayer on June 10, 2003. Taxpayer failed to contact the hearing officer at the designated time.

**DISCUSSION**

**I. Sales/Use Tax—Best information available; failure to maintain adequate records**

As a registered retail merchant under a duty to collect and remit Indiana gross retail tax as agent for the state, taxpayer is required to document the tax status of all its Indiana transactions. 45 IAC 2.2-2-2. The burden of proving a transaction is not subject to gross retail taxation is on the

retail merchant. 45 IAC 2.2-3-25. The Legislature has not authorized the Department to speculate on the content of business records that are lost, do not exist, or are otherwise unavailable for audit examination.

An audit conducted in good faith according to established protocols establishes a prima facie presumption that the resulting assessment is valid. The burden of proving otherwise is on the taxpayer. 45 IAC 15-5-3. The alleged content of lost records does not persuasively contradict the content of existing business records verified on audit. The proposed amendment reflects the best information available to the Department under 45 IAC 15-5-1.

The taxpayer has failed to carry its burden of proof that the transactions in question were not subject to gross retail tax. Taxpayer was neither able to establish that the audit of the best information available was carried on in bad faith nor that the record verifies its position.

### **FINDINGS**

The taxpayer is respectfully denied.